

enter into a Loan Guarantee Agreement.

§ 609.6 Submission of applications.

(a) In response to a solicitation or written invitation to submit an Application, an Applicant submitting an Application must meet all requirements and provide all information specified in the solicitation and/or invitation and this part.

(b) An Application must include, at a minimum, the following information and materials:

(1) A completed Application form signed by an individual with full authority to bind the Applicant and the Project Sponsors;

(2) Payment of the Application filing fee (First Fee) for the Pre-Application, if any, and Application phase;

(3) A detailed description of all material amendments, modifications, and additions made to the information and documentation provided in the Pre-Application, if a Pre-Application was requested in the solicitation, including any changes in the proposed project's financing structure or other terms;

(4) A description of how and to what measurable extent the project avoids, reduces, or sequesters air pollutants and/or anthropogenic emissions of greenhouse gases, including how to measure and verify those benefits;

(5) A description of the nature and scope of the proposed project, including:

- (i) Key milestones;
- (ii) Location of the project;
- (iii) Identification and commercial feasibility of the new or significantly improved technology(ies) to be employed in the project;

(iv) How the Applicant intends to employ such technology(ies) in the project; and

(v) How the Applicant intends to assure, to the extent possible, the further commercial availability of the technology(ies) in the United States;

(6) A detailed explanation of how the proposed project qualifies as an Eligible Project;

(7) A detailed estimate of the total Project Costs together with a description of the methodology and assumptions used;

(8) A detailed description of the engineering and design contractor(s), construction contractor(s), equipment supplier(s), and construction schedules for the project, including major activity and cost milestones as well as the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties to be provided;

(9) A detailed description of the operations and maintenance provider(s), the plant operating plan, estimated staffing requirements, parts inventory, major maintenance schedule, estimated annual downtime, and performance guarantees and related liquidated damage provisions, if any;

(10) A description of the management plan of operations to be employed in carrying out the project, and information concerning the management experience of each officer or key person associated with the project;

(11) A detailed description of the project decommissioning, deconstruction, and disposal plan, and the anticipated costs associated therewith;

(12) An analysis of the market for any product to be produced by the project, including relevant economics justifying the analysis, and copies of any contractual agreements for the sale of these products or assurance of the revenues to be generated from sale of these products;

(13) A detailed description of the overall financial plan for the proposed project, including all sources and uses of funding, equity and debt, and the liability of parties associated with the project over the term of the Loan Guarantee Agreement;

(14) A copy of all material agreements, whether entered into or proposed, relevant to the investment, design, engineering, financing, construction, startup commissioning, shutdown, operations and maintenance of the project;

(15) A copy of the financial closing checklist for the equity and debt to the extent available;

(16) Applicant's business plan on which the project is based and Applicant's financial model presenting project *pro forma* statements for the

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proposed term of the Guaranteed Obligations including income statements, balance sheets, and cash flows. All such information and data must include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;

(17) Financial statements for the past three years, or less if the Applicant has been in operation less than three years, that have been audited by an independent certified public accountant, including all associated notes, as well as interim financial statements and notes for the current fiscal year, of Applicant and parties providing Applicant's financial backing, together with business and financial interests of controlling or commonly controlled organizations or persons, including parent, subsidiary and other affiliated corporations or partners of the Applicant;

(18) A copy of all legal opinions, and other material reports, analyses, and reviews related to the project;

(19) An independent engineering report prepared by an engineer with experience in the industry and familiarity with similar projects. The report should address: the project's siting and permitting, engineering and design, contractual requirements, environmental compliance, testing and commissioning and operations and maintenance;

(20) Credit history of the Applicant and, if appropriate, any party who owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the project or the Applicant;

(21) A preliminary credit assessment for the project without a loan guarantee from a nationally recognized rating agency for projects where the estimated total Project Costs exceed \$25 million. For projects where the total estimated Project Costs are less than \$25 million and where conditions justify, in the sole discretion of the Secretary, DOE may require such an assessment;

(22) A list showing the status of and estimated completion date of Applicant's required project-related applications or approvals for Federal, state, and local permits and authorizations to

site, construct, and operate the project;

(23) A report containing an analysis of the potential environmental impacts of the project that will enable DOE to assess whether the project will comply with all applicable environmental requirements, and that will enable DOE to undertake and complete any necessary reviews under the National Environmental Policy Act of 1969;

(24) A listing and description of assets associated, or to be associated, with the project and any other asset that will serve as collateral for the Guaranteed Obligations, including appropriate data as to the value of the assets and the useful life of any physical assets. With respect to real property assets listed, an appraisal that is consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers, is required;

(25) An analysis demonstrating that, at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the Guaranteed Obligations (including interest) according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based;

(26) Written affirmation from an officer of the Eligible Lender or other Holder confirming that it is in good standing with DOE's and other Federal agencies' loan guarantee programs;

(27) A list of all of the requirements contained in this part and the solicitation and where in the Application these requirements are addressed;

(28) A statement from the Applicant that it believes that there is "reasonable prospect" that the Guaranteed Obligations will be fully paid from project revenue; and

(29) Any other information requested in the invitation to submit an Application or requests from DOE in order to clarify an Application;

(c) DOE will not consider any Application complete unless the Applicant has paid the First Fee and the Application is signed by the appropriate entity or entities with the authority to bind the Applicant to the commitments and

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representations made in the Application.

§ 609.7 Programmatic, technical and financial evaluation of applications.

(a) In reviewing completed Applications, and in prioritizing and selecting those to whom a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, the applicable solicitation, and this part. Applications will be considered in a competitive process, i.e. each Application will be evaluated against other Applications responsive to the Solicitation. Greater weight will be given to applications that rely upon a smaller guarantee percentage, all else being equal. Concurrent with its review process, DOE will consult with the Secretary of the Treasury regarding the terms and conditions of the potential loan guarantee. Applications will be denied if:

(1) The project will be built or operated outside the United States;

(2) The project is not ready to be employed commercially in the United States, cannot yield a commercially viable product or service in the use proposed in the project, does not have the potential to be employed in other commercial projects in the United States, and is not or will not be available for further commercial use in the United States;

(3) The entity or person issuing the loan or other debt obligations subject to the loan guarantee is not an Eligible Lender or other Holder, as defined in § 609.11 of this part;

(4) The project is for demonstration, research, or development.

(5) The project does not avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases; or

(6) The Applicant will not provide an equity contribution.

(b) In evaluating Applications, DOE will consider the following factors:

(1) To what measurable extent the project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouse gases;

(2) To what extent the new or significantly improved technology to be employed in the project, as compared to Commercial Technology in general use in the United States, is ready to be em-

ployed commercially in the United States, can be replicated, yields a commercial viable project or service in the use proposed in the project, has potential to be employed in other commercial projects in the United States, and is or will be available for further commercial use in the United States;

(3) To the extent that the new or significantly improved technology used in the project constitutes an important improvement in technology, as compared to Commercial Technology, used to avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases, and the Applicant has a plan to advance or assist in the advancement of that technology into the commercial marketplace;

(4) The extent to which the requested amount of the loan guarantee, and requested amount of Guaranteed Obligations are reasonable relative to the nature and scope of the project;

(5) The total amount and nature of the Eligible Project Costs and the extent to which Project Costs are funded by Guaranteed Obligations;

(6) The likelihood that the project will be ready for full commercial operations in the time frame stated in the Application;

(7) The amount of equity commitment to the project by the Applicant and other principals involved in the project;

(8) Whether there is sufficient evidence that the Applicant will diligently pursue the project, including initiating and completing the project in a timely manner;

(9) Whether and to what extent the Applicant will rely upon other Federal and non-Federal governmental assistance such as grants, tax credits, or other loan guarantees to support the financing, construction, and operation of the project and how such assistance will impact the project;

(10) The feasibility of the project and likelihood that the project will produce sufficient revenues to service the project's debt obligations over the life of the loan guarantee and assure timely repayment of Guaranteed Obligations;

(11) The levels of safeguards provided to the Federal government in the event